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9553.0060 which determine the payment for property costs and violate the intent of the Deficit Reduction Act of 1984, section 2314, (DEFRA). The Department desires to retain the provision as stated in the proposed rule.

Comment 25. Part 9553.0041, Subpart 2, Item K. Mr. Lanigan indicated that this item requires charts showing staff assignments but does not instruct providers as to what these charts should include. The cost report on which this information is submitted specifies the staff positions which must be reported. The Department believes that this provision is clear and wishes to retain it as published.

Comment 26. Part 9553.0041, subpart 3, item E and subpart 10. Mr. Lanigan commented that this provision is too broad considering the penalties for non-compliance with information requests. It should be noted that noncompliance with a request for supplemental reports does not necessarily result in a 20% reduction of the payment rate in effect. The rule also specifies at subpart 8, item B, that the 20% reduction penalty will not be invoked if a payment rate can be calculated by disallowance of the cost for which the additional information is requested.

Ms. Martin contends that the reduction of payment rates by 20% proposed in subpart 10 is illegal. She asserts that there is no statutory basis for this provision and refers to Judge Lunde's report on Rule 50 in which he refused to approve the 20% reduction where it was not expressly permitted by statute.

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Ms. Martin also argues that this 20% reduction would violate the Boren Amendment. Ms. Martin claims that, under the Boren Amendment, rates must be adequate to provide for the costs that must be incurred for the quality care of residents in efficiently and economically operated facilities and services. The Department disagrees. The federal government, in its review of the State Plan, determines whether the procedures used by the State are based on methods and standards that are adequate to provide for the cost that must be incurred for the care of residents in efficiently and economically operated facilities. (42 U.S.C., section 1396a(a)(13)).

It is clear that the Boren Amendment does not apply to individual rates, but to the reimbursement method of the State. Cf. Iroutman v. Cohen, 34,088 CCH Medicare and Medicaid Guide at 9901 (where in analyzing the Pennsylvania nursing home reimbursement system under the prior federal standard, the court observed that the federal standard may still be met "even where the method used results in underpayment to some providers."). Temporary Rule 50 and Temporary Rule 53 contained the 20% reduction provision and both these rules were approved when state plan amendments were submitted to the Health Care Finance Administration. The Department desires to retain these provisions as published.

Comment 27. Part 9553.0041, subpart 6. Ms. Martin attempted to characterize the Department's introduction of the Arthur Andersen letter (Exhibit E) as an attempt to bolster the proposed rule with that letter. It must be clarified that the Department did not offer this letter as direct comment on the proposed rule. The purpose of offering the letter was to delineate the relationship between GAAP and a reimbursement rule. It must be clarified that Arthur Andersen's opinion is that it is the providers who must conform to GAAP

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but the rule is not necessarily bound by GAAP because of the acknowledged difference in the goals and purposes of the reimbursement rule as opposed to GAAP. The Department desires that subpart 6 be retained as proposed.

Comment 28. 9553.0041, subpart 1. Several commentators were concerned with the feasibility of a common reporting year based on their belief that the Department will not be able to set rates in a timely manner. The Department believes that the streamlining inherent in a common reporting year, in combination with staff increases, auditor training and automation will allow the Department to meet the deadlines in the proposed rules. Therefore, the Department wishes to retain this provision as published.

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Comment 29. Part 9553.0041, subpart 8. Mr. Lenigan and Mr. Lokhorst both commented that the deadline for requesting a 30 day extension to the March 31 requirement for filing the cost report is only one month after the end of the reporting year. They feel that it is unreasonable to expect a provider to determine 60 days in advance whether or not an extension will be needed.

The Department agrees that the proposed provision could result in an unnecessary burden of additional paperwork if, as Mr. Lokhorst suggests, the end result will be that all providers will file for an extension. Therefore, the Department proposes the following amendment to the rule: Part 9553.0041, subpart 8, page 34, line 16: strike "to C" and add "and E"; item A, page 34, line 18: delete "March 31" and add "April 30"; item A, page 34, line 24: delete "three" and add "four"; item C, page 35, line 10-14: delete "C. The commissioner shall grant a one month extension of the reporting deadline, if a facility submits a written request by February 1. The commissioner must notify the facility of the decision to grant or deny an extension within 15 days of receiving the request.".

This change in the proposed rule is reasonable because it relieves providers of the burden of requesting extensions and gives all providers an additional month in which to prepare cost reports.

Comment 30. Part 9553.0041, subpart 11. Mr. Lokhorst suggested that the time period to perform a field audit be shortened. The time period establishes a maximum length of time. Since the size of facilities and provider groups ranges from six beds to 658 beds, it is necessary and reasonable to allow sufficient time to perform the field audit. The Department wishes to retain this provision as published.

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Comment 31. Part 9553.0041, subpart 13. Mr. Lanigan expressed concern that this provision could result in the Department's auditors making adjustments beyond the four year audit period. The Department believes that subpart 13 is clear and that only the rates for the four reporting years under audit may be adjusted. If errors or adjustments are found in periods beyond the four year audit period, the effect of those adjustments will result in changes to rates only during the four year audit period. The Department wishes to retain this provision as published.

Comment 32. General. Ms. Martin suggested that the proposed rule should contain a provision to continue payment of the \$.27 per day operating cost allowance which had been instituted under Temporary Rule 53. The Department believes that this allowance cannot appropriately be made a part of the permanent rule because of the legislature mandate contained in H.S. 256B.501, subdivision 3 to tie the reimbursement system to costs incurred for care of residents in an efficient and economic manner. The rule, as proposed, follows the legislative directive by providing for reimbursement on the basis of historical operating costs augmented for inflation. The allowance is not a cost, nor does it reflect a cost. Any facility that actually used the \$.27 per day operating cost allowance for additional operating costs will continue to receive the benefit of the allowance through the proposed rule because those expenditures would have become part of the cost base which is indexed forward. The Department wishes to retain the language of the proposed rule as published.

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Comment 33. Part 9553.0050, subpart 1. Ms. Busch questioned whether historical maintenance costs plus the Consumer Price Index would sufficiently cover costs of unplanned maintenance needs caused by destructive residents. She believed that food costs cannot be planned in advance. She also commented on the fact that the January CPI-U will be nine months old at the time it is reflected in rates paid to providers. Ms. Busch proposed that providers be paid historical maintenance costs plus ten percent plus the CPI index factor.

The Department recognizes that a lag exists between the date of the CPI-U index and the start of the rate year; for that reason, the proposed rule requires the Department to annualize the January 1 index to take into account changes in the economy for the next nine months. It is unworkable to use the July 1 CPI-U because the date on which this index is actually issued fluctuates, and it is impossible to predict whether it will be available in time to meet the rate setting deadlines. While the nature of the ICF/MR industry is such that unexpected expenditures frequently occur, the pattern of costs caused by resident behavior is already reflected in the historical costs.

The ten percent proposed by Ms. Busch would violate the legislative mandate of H.S. 256B.501, subdivision 3; see page 46 of the Statement of Need and Reasonableness. The Department wishes to retain this provision as published.

Comment 34. Part 9553.0050, subpart 1, item A, subitem (1). Many commentators (Sajevic, Busch, C. Johnson, Larson, Martin, Gee, Wallace, Baungarten) raised objections or concerns to the proposed administrative cost limitation. These objections or concerns can be summarized as follows:

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- Administrative costs bear no relationship to program and maintenance costs or per diem;
- The rule, as proposed, increases the cost of administration, however, the administrative limit was developed from the 1983 cost report data and does not reflect the cost classifications in the proposed rule;
- The limit must be based on a fixed dollar (per diem), not a percentage;
- The limit needs to be developed from a cost base in which the administrative costs are classified and allocated pursuant to the provisions of the proposed rate;
- It was proposed that actual administrative costs be allowed for one or two years;
- Administrative limits should be established based on comparable groups; and
- There is a need for more research in order to determine the necessary levels of administrative cost.

In response to these objections and concerns, the Department has reviewed the suggestions offered at the public hearing, written comments, and the language of the proposed rule and proposes the following amendments: Page 39, lines 19 to 29, strike everything and insert:

"(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).

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(a) The commissioner shall classify each facility into one of two groups based on the number of licensed beds reported on the facility's cost report. Group one shall include those facilities with more than 20 licensed beds. Group two shall include those facilities with 20 or fewer licensed beds.

(b) The commissioner shall determine the administrative allowable historical operating cost per licensed bed for each facility within the two groups in unit (a) by dividing the administrative allowable historical operating cost in each facility by the number of licensed beds in each facility.

(c) The commissioner shall establish the administrative cost per licensed bed limit by multiplying the median of the array for each group of administrative allowable historical operating costs per licensed bed by 105 percent.

(d) For the rate year beginning October 1, 1986, the cost of a certified audit must not be included in the computation of the administrative allowable historical operating cost or its limit. The facility shall report to the commissioner by July 31, 1986, the greater of the cost incurred for a certified audit for either the reporting year ended December 31, 1985 or a fiscal year ending during the 1985 calendar year.

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The commissioner shall determine the average cost of a certified audit per licensed bed by totaling the cost of each certified audit submitted to the commissioner by July 31, 1986, and dividing the sum by the total number of licensed beds in facilities which have submitted costs for a certified audit. The maximum allowable cost for a certified audit shall be the lesser of the facility's reported cost or 115 percent of the average cost of a certified audit per licensed bed multiplied by the number of licensed beds in the facility.

(e) For the rate years beginning on October 1, 1986 and October 1, 1987, the maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount in unit (c) multiplied by the facility's licensed beds.

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987 by the percentage change in the all urban consumer price index (CPI-U) for Minneapolis-St. Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Januarys prior to the beginning of the rate year. The year 1987 is the standard reference base period. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds. The commissioner may recompute the limit in this unit once within a five-year period.

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(g) The administrative cost per licensed bed limit and the average cost of a certified audit determined in this subitem must not be adjusted as a result of field audits, appeals, and amendments."

Page 40, line 4 after "be", insert "adjusted for reclassifications in accordance with Part 9553.0041 and"; page 41, lines 11 and 12 delete everything and insert:

"E. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem shall be computed by dividing the allowable certified audit cost as determined in item A, subitem (1) unit (d) by the greater of resident days or 85 percent of capacity days."

Page 41, line 33 after "base period," insert:

"For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U."

Page 42, line 19 after "items B to E." insert:

"For the rate year beginning October 1, 1986, the total operating cost payment rate shall be the sum of items B to E and the allowable certified audit cost per diem as determined in subpart 1, item E."

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